



## United States Department of the Interior

**FISH AND WILDLIFE SERVICE**  
Bishop Henry Whipple Federal Building  
1 Federal Drive  
Fort Snelling, MN 55111-4056

IN REPLY REFER TO:

FWS/AES-HC/010382/010623

DEC 27 2002

Ms. Molly Holt, Attorney-Adviser  
Office of the Assistant General Counsel for Ocean Services  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
1305 East-West Highway, Suite 6111  
Silver Spring, Maryland 20910

Dear Ms. Holt:

This is in response to the October 23, 2002, Federal Register Notice regarding the "Federal Consistency Appeal by Barnes Nursery, Inc. From an Objection by the Ohio Department of Natural Resources" and to the U.S. Department of Commerce letter of December 10, 2002, to the Director of the U.S. Fish and Wildlife Service (Service) soliciting comments on the appeal. The project is located in East Sandusky Bay, Erie County, Ohio.

The original project created a channel approximately 1,500 feet long, 55 feet wide, and 5 feet deep using dredging techniques. The dredged material was used to create an earthen berm 1,500 feet long, 55 feet wide and approximately 6 feet high that runs parallel with the channel. On April 18, 2001, 200 feet of the far western portion of the project, where wetland encroachment had occurred, was restored to former topography. The applicant has requested authorization to maintain the constructed portion of this project with the following modifications: grade the berm to a relatively uniform elevation of 6 feet; divide the berm into five separate islands by cutting circulation channels every 300 feet; grade the banks of these islands to a 4:1 slope to foster wetland plant zonation; and excavate a narrow feeder channel 500 feet long and 1.5 feet deep from the end of the existing channel to the area of water influx from Lake Erie. The stated purpose of the proposed project is as follows from the Corps of Engineers Public Notice: "to restore the former hydrologic circulation to a portion of East Sandusky Bay and provide irrigation water for the operation of Mr. Barnes' nursery; establish new avifauna habitat on a series of islands; provide deep water fish and aquatic vegetation habitat; and promote the conversion of about five acres of barren mudflats to coastal wetlands. The applicant states these measures are necessary as a result of sedimentation and degradation to the area caused by human activities over the past century."

The Service's Ohio Field Office has been an active participant in the review of this project since the project's inception, as documented in the enclosed copies of five letters of comment and two email messages previously provided to the Corps. The Service supports the Ohio Department of

Ms. Molly Holt

2

Natural Resources' denial of the Barnes Nursery project under the Coastal Zone Management Act and Ohio Coastal Management Program Policies 6, 12, 14, 27, and 29 and provides supportive documentation as follows:

**Policy 12 - Wetlands:** This project is located within Sheldon Marsh, one of Ohio's last remaining intact coastal wetland systems. The majority of the Marsh is protected as a State Nature Preserve, but the outskirts of the area are private property. There is, however, no physical boundary between the State and private land. Although the current channel and berm is located on private property, it is now resulting in, and will continue to result in, direct impacts to State land. Sheldon Marsh is a large, contiguous, high quality, wetland system that has been designated a Category 3 wetland (supporting superior wetland functions) by the Ohio Environmental Protection Agency. This project will very likely contribute to the degradation of this system by increasing sedimentation and erosion, potentially introducing exotic invasive species, and altering the hydrological patterns of the wetland complex.

**Policy 14 - Rare and Endangered Species:** The completed portion of the project is located adjacent to an area designated by the Service as critical habitat for the piping plover (*Charadrius melodus*), a Federal and State endangered species. The plover nests on shoreline and island sandy beaches with sparse vegetation and the presence of small stones or cobble. Areas within Sheldon Marsh that contain these elements are included under the critical habitat designation, thus requiring consultation with the Service under section 7 of the Endangered Species Act for any action by a Federal agency that would result in the destruction or adverse modification of the designated habitat. The project portion of Sheldon Marsh does not contain the constituent elements and, therefore, is not included in the area designated as critical habitat. Thus, it is not subject to section 7 consultation requirements. It does, however, provide foraging habitat for the plover and a myriad of other birds and waterfowl, including the bald eagle, a Federal threatened and State endangered species. Although extremely rare, plovers were seen utilizing Sheldon Marsh in September of 1999, and bald eagles are regularly seen there. Sheldon Marsh is one of the most commonly visited places in Ohio to observe migrating birds, shore birds, and rare species. The "barren mudflat" habitat that currently exists on the site provides a wealth of insects and other invertebrates for shorebirds and, when inundated, provides fish and other aquatic food sources for these birds. During certain times of year, this area may be used for fish spawning and as a fish nursery area. Overall, this area is rich in diversity and is a valuable habitat for the fish and wildlife in the area, including the piping plover and bald eagle. Eagles generally avoid areas that are disturbed by humans. Any modification of this habitat could negatively affect the piping plover, bald eagle, and other birds, by reducing the value of the habitat for these species. We do not believe that disturbing this system by creating and maintaining the channel and islands will actually improve the existing habitat for any of the species mentioned above.

**Policy 6 - Water Quality, Policy 27 - Fisheries Management, and Policy 29 - Wildlife Management:** On a site visit in 2001, Service staff observed areas where the channel was causing erosion along the wetland area, and the existing berm was eroding into the marsh. Although future revegetation of this area may reduce erosion, turbidity and sedimentation in the

Ms. Molly Holt

3

marsh will continue to be a threat if the channel and berm (islands) remain. This was not the case when the area was a mudflat. In addition, rather frequent dredging may be needed to maintain the channel, thereby increasing the likelihood that project-induced turbidity and sedimentation will continue to be a threat to the Marsh. Most fish species will not utilize waters with high suspended solids, which could reduce the value of this area for spawning, thus leading to fewer fish eggs and fry, two valuable food sources for birds. Many macro- and micro-invertebrates also prefer areas with low sediment loads. These invertebrates also provide an important food source for birds.

Without careful management of the area and continuous efforts to control invasive vegetation, such as purple loosestrife and *Phragmites* sp., these islands may become infested with these species, which out compete native plant species and provide little benefit to native wildlife. If this area were to be regularly managed to control invasive species, this could likely involve the use of herbicides and heavy machinery, which further alters the natural state of the marsh and disturbs the ecosystem. The proposed islands will provide artificial nesting and foraging habitat for opportunistic species such as Canada geese and gulls. The increased presence of these species will decrease the value of the marsh for other native bird species. Grazing and nesting activities of Canada geese can reduce the available native marsh vegetation, which would result in altering and/or reducing foraging and breeding habitat for other native species. Gulls are voracious predators of the eggs and chicks of other bird species and, therefore, should not be encouraged to nest in areas where rare bird species breed.

Furthermore, we question the purported value to fish of the "deep water habitat" provided by the excavated channel. The channel will have minimal value as overwintering habitat and little value during the remainder of the year unless submersed aquatic vegetation becomes established in the channel. Sediment accumulation in the channel and the periodic maintenance dredging that will likely be needed to address that accumulation will preclude the establishment of vegetation. Regular maintenance dredging will also continually disturb the adjacent marsh ecosystem, reducing the quality of the habitat for birds and other wildlife. The channel will also provide a potential pathway for invasive species to move into areas that they do not currently occupy.

Finally, after having discussed this project with other agency officials and Service biologists, our field staff believes that other alternatives exist that could be designed to provide Barnes Nursery with sufficient water to meet its needs while avoiding impacts to Sheldon Marsh. It does not appear that these alternatives have been fully examined by the applicant and/or the Corps to determine if they are reasonable and prudent and capable of providing sufficient water.

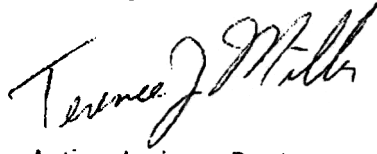
Due to the value of this area as one of Ohio's last remaining intact coastal wetland systems, including its value to piping plovers, bald eagles, and other fish and wildlife resources, the Service recommends that the U.S. Department of Commerce reject the appeal submitted by Barnes Nursery, Inc.

Ms. Molly Holt

4

We appreciate the opportunity to provide these comments. If you have questions, or if we may be of further assistance in this matter, please contact Ms. Megan Seymour, of our Ohio Field Office, at (614) 469-6923, extension 16, or Mr. Lyn MacLean, of my staff, at (612) 713-5330.

Sincerely,



Acting Assistant Regional Director  
Ecological Services

Enclosures (7)

cc: Mr. Paul Baldrige, ODNR, REALM, Columbus, OH (without enclosures)  
Randy Bourmiquet, OEPA, 401/Wetland Section, Columbus, OH (without enclosures)





United States Department of the Interior  
FISH AND WILDLIFE SERVICE



Ecological Services  
6950 Americana Parkway, Suite H  
Reynoldsburg, Ohio 43068-4127  
COMM: 614/469-6923 FAX: 614/469-6919  
August 21, 2000

Phil Frapwell  
U.S. Army Corps of Engineers  
Buffalo District  
1776 Niagara Street  
Buffalo, New York 14207-3199

Dear Mr. Frapwell:

This letter summarizes our comments stemming from the July 26, 2000 meeting about the dredge and fill project by Barnes Nursery, Inc. adjacent to Sheldon Marsh in Erie County, Ohio. The meeting took place among the Corps, Ohio Department of Natural Resources, Ohio Environmental Protection Agency, and U.S. Fish and Wildlife Service. The Barnes Project was originally authorized by the Corps on June 20, 2000 (PCN 2000-01800) under Nationwide Permit #27 (restoration activities).

We echo the concerns of the Ohio Department of Natural Resources and Ohio Environmental Protection Agency regarding wetlands and critical habitat for the Federally endangered piping plover (*Charadrius melodus*). The Ohio Department of Natural Resources documented its concerns in its August 3, 2000 letter to you. The Ohio Environmental Protection Agency documented its concerns in its August 1, 2000 letter to you. We ask that the Corps follow through on your July 26, 2000 promise to implement with Mr. Barnes the three actions documented at the end of Ohio Environmental Protection Agency's August 1, 2000 letter.

We also believe Sheldon Marsh is a Class 3 wetland for which a nationwide permit should not have been issued. After reviewing the dredge and fill site with personnel from the Ohio Department of Natural Resources and Ohio Environmental Protection Agency, we ask that the dredged material be returned its original location with best management practices implemented to minimize degradation of water quality and wildlife habitat. We also recommend that restoration measures be taken to return the dredge site to its former natural condition.

We informed you at the July 26 meeting that Sheldon Marsh is currently proposed as critical habitat for the Federally endangered piping plover. The Barnes dredge project occurred along the boundary of Sheldon Marsh that may have foraging value for piping plovers and other shorebirds. Under the Endangered Species Act of 1973, as amended, the Corps must conference with the U.S. Fish and Wildlife Service when proposed critical habitat will be adversely affected by an action subject to Corps approval. Prior to the July 26 meeting,

**NOAA**  
**NOAA**

no such consultation occurred. During the July 26, 2000 meeting, we advised the Corps to not allow Mr. Barnes to expend any more effort on the dredge project until after the Corps has conferred with the U.S. Fish and Wildlife Service about the piping plover and has required an individual permit for the project.

Please feel free to contact Endangered Species Biologists Buddy Fazio (ext. 13) or Angela Boyer (ext. 22) with any questions you may have.

Sincerely,



Kenneth C. Lammers  
Acting Supervisor

cc: Stu Lewis, Chief, ODNR Div. Natural Areas and Preserves, Columbus, OH  
Wayne Warren, Chief, ODNR Div. Real Estate and Land Mgt., Columbus, OH  
Lisa Morris, Chief, OEPA Div. Surface Water, Columbus, OH



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Ecological Services  
6950 Americana Parkway, Suite H  
Reynoldsburg, Ohio 43068-4127



COMM: 614/469-6923 FAX: 614/469-6919  
October 13, 2000

Attn: Michael G. Montone, LRB  
U.S. Army Corps of Engineers  
Buffalo District  
1776 Niagara Street  
Buffalo, New York 14207-3199

Dear Mr. Montone:

We appreciate the opportunity to comment further on the Barnes Nursery, Inc. dredge and fill project in Ohio along with associated restoration, management and the initial authorization by the Corps of its associated Nationwide Permit #27 (PCN 2000-01800). We received and reviewed your September 29, 2000 fax and related email notices pertaining to the Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands in east Sandusky Bay, Erie County, Ohio. We also received your August 30, 2000 email message addressing chronology of events pertaining to NWP #27 permit issuance and proposed critical habitat of the Federally endangered piping plover (*Charadrius melodus*). We provide comments pertaining to both wetlands and endangered species.

#### Wetlands

We are very disturbed that your September 20, 2000, letter to Mr. Robert W. Barnes seems to indicate that NWP #27 is still in effect. While it is true Mr. Barnes is not in compliance with the previously issued NWP #27, the important remedy is full restoration and NOT a return to NWP #27 compliance. At the multi-agency meeting on July 26, 2000, and in our August 21, 2000, letter to the Corps we asked that the NWP #27 permit be rescinded. We also asked that Mr. Barnes be required to undergo the full 404/401 permit process to allow maximum time for multi-agency planning, review and workable solutions. Based on the fact that Mr. Barnes' true need is a source of water and not "restoration", NWP #27 should never have been issued by the Corps to Mr. Barnes. The NWP # 27 should never have been issued also because the Sheldon Marsh area is a Class 3 wetland and is used by the Federally endangered piping plover.

000000 000

We ask the Corps to reject the Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands in east Sandusky Bay, Erie County, Ohio. The Sheldon Marsh area is vitally important to numerous species of shorebirds that include the Federally endangered piping plover, the state endangered common tern (*Sterna hirundo*), egrets, herons and others. The nest island design proposed in the Plan will encourage gulls, geese, and swans that will be destructive predators, consumers and competitors to the piping plover, common tern, other shorebirds and also sensitive plant species within the Sheldon Marsh preserve. The nest island design and deep water design will not in any way enhance the Sheldon Marsh area or immediate project area for shorebirds. The Plan will also result in hydrological alterations detrimental to Sheldon Marsh in terms of nutrient depletion, interference with water runoff feeding the marsh and negative effects upon plant community composition. If left open much longer, the excavated channel will encourage invasion of unwanted exotic species into Sheldon Marsh such as *Phragmites* plants and perhaps unwanted fish.

#### Endangered Species and Critical Habitat

We are very concerned that the Corps and Mr. Robert W. Barnes have not acknowledged or offered assurances that the Federally endangered piping plover and its proposed critical habitat will be addressed. There is no mention of the piping plover or its proposed critical habitat in your September 20, 2000, letter to Mr. Barnes. There is no mention of the piping plover or its proposed critical habitat in the Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands. The above paragraph in which we ask for rejection of the Compliance and Management Plan contains many of the reasons the plan is detrimental to the piping plover and its proposed critical habitat. The dredge and fill activity conducted during June and July 2000 already adversely impacted mud flats valuable to the piping plover and other shorebirds for foraging. Both the Corps and Mr. Barnes will not be in compliance with the Endangered Species Act unless the five steps we recommend below are implemented.

The Great Lakes piping plover was listed as Federally endangered in 1986. Sheldon Marsh and one other site in northern Ohio were officially proposed for piping plover critical habitat designation on July 6, 2000. The piping plover has remained on our county-based list of species with Federal status for many years in the eight Ohio counties containing Lake Erie shoreline. Sheldon Marsh is an annual migratory rest and foraging location for piping plovers. In recent years, piping plovers were observed displaying courtship behavior which means Sheldon Marsh may some day be used by breeding piping plovers to nest and raise young.

As you know, Section 7(a)(2) of the Endangered Species Act of 1973, as amended (hereafter, ESA) requires a Federal agency (e.g., the Corps) to insure that any action authorized, carried out or funded by the agency is not likely to jeopardize the continued existence of a Federally listed species or result in the destruction or adverse modification of habitat for the species. To paraphrase Section 7(a)(4) of the ESA, each Federal agency (e.g., the Corps) shall conference with the U.S. Fish and Wildlife



Service on any action which is likely to result in the destruction or adverse modification of proposed critical habitat for a Federally proposed or listed species.

It is true the Corp's Gary Buck and our office's Habitat Conservation biologist Ken Multerer met in good faith on June 14 to discuss the Barnes Nursery project. However, the discussion on June 14 focused only on wetland issues. Ken Multerer did not concur with issuance of NWP #27 at that time, and we did not see the NWP #27 permit in our office for review at any time prior to its issuance.

No endangered species issues were discussed by the Corps and our office prior to July 26, 2000. This means the Corps issued NWP #27 to Barnes Nursery, Inc. without consulting with us about endangered species. This is why I verbally notified the Corps and other agencies at the interagency meeting on July 26 about the fact that Sheldon Marsh is proposed as piping plover critical habitat. As a follow-up to the July 26 meeting, we sent our August 21, 2000, letter giving written notification of the proposed critical habitat. The Barnes Nursery, Inc. dredge and fill project has thus become an example of why the Corps Nationwide Permit process sometimes does not adequately address endangered species issues.

#### ESA and Wetland Recommendations

The Barnes Nursery, Inc. dredge and fill project has already seriously impacted the integrity and hydrology of Sheldon Marsh and proposed piping plover critical habitat. The project and its Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands also represent serious long-term threats which will further degrade the quality of Sheldon Marsh and piping plover critical habitat. For these reasons, we ask the Corps to implement the following steps.

- 1) Cease all dredge and fill activity; rescind the NWP #27 permit for Barnes Nursery.
- 2) Reject and do NOT implement the Proposed Compliance and Management Plan for Deep Water Habitat and Bird Nesting Islands. The Plan is harmful to Sheldon Marsh, to piping plover proposed critical habitat and to the piping plover itself. Causing harm to a Federally endangered species constitutes take under the ESA; the Corps and Barnes Nursery are not currently authorized under sections 7 and 9 of the ESA, respectively, to conduct take of Federally endangered species.
- 3) Immediately require and implement full restoration of the Barnes Nursery dredge and fill project area. Vegetation, soils and hydrology should be restored to their initial condition prior to June 14, 2000. We are glad the Corps is requiring Barnes Nursery to stabilize the spoil piles with grass seed as an interim and, hopefully, temporary measure.
- 4) Require Barnes Nursery to undergo full individual 404/401 permit review at both State and Federal levels. We ask the Corps to allow our office and all other Federal or State offices involved to fully review any permit for wetland and endangered species concerns before the permit is issued. It is our hope that

1

through this process a winning solution will be developed which successfully addresses the need of the Barnes Nursery for water and the vital priority of maintaining the ecological and hydrological integrity of Sheldon Marsh and proposed piping plover critical habitat.

- 5) Concurrently with Item 4 above, initiate informal conferencing with us under Section 7(a) (4) of the ESA in preparation for formal conferencing and development of a formal conference opinion to address concerns about proposed piping plover critical habitat. At the Corps request, it may be possible to combine the conference with mandatory consultation already required under Section 7(a)(2) of the ESA for the Federally endangered piping plover itself.

We ask you to confirm in writing that the above five steps will be implemented by the Corps. Please feel free to contact me (x 13) or Habitat Conservation Biologist Ken Multerer (x 16) with any questions you may have.

Sincerely,

*Buddy B. Fazio*

Buddy B. Fazio  
Endangered Species

Acting For:  
Kent E. Kroonemeyer  
Supervisor

cc: Honorable George Voinovich, U.S. Senate, Columbus, OH  
Stu Lewis, Chief, ODNR Div. Natural Areas and Preserves, Columbus, OH -  
Wayne Warren, Chief, ODNR Div. Real Estate and Land Mgt., Columbus, OH  
Kim Baker, Div. Real Estate and Land Mgt., Columbus, OH  
Lisa Morris, Chief, OEPA Div. Surface Water, Columbus, OH  
Ric Queen, OEPA Div. Surface Water, Columbus, OH  
Laura Ragan, USFWS-R3-TE, Twin Cities, MN  
Ron Refsnider, USFWS-R3-TE, Twin Cities, MN



Megan Sullivan

04/11/2001 04:48 PM

To: michael.g.montone@usace.army.mil  
cc: Ken Lammers, Angela Boyer/R3/FWS/DOI,  
cc:  
Subject: Barnes Nursery Interim Corrective Measures

Dear Mr. Mo

The U.S. Fish and Wildlife Service has finished reviewing the Interim Corrective Measures, as issued by the Buffalo Corps of Engineers, for the Barnes Nursery project. Specifically, the measures agreed upon by the applicant include the following:

- a) Approximately 300 linear feet of the existing berm (at the western end of the project) will be eliminated by backfilling the parallel channel to restore the area to pre-construction contours.
- b) The channel will be backfilled in "reverse order" with the goal of restoring as much topsoil (and the associated seed bank) as possible to the near surface of the project area.
- c) Any excess backfill material will be removed to an upland location.
- d) Applicant will be responsible for controlling invasive plant species.

The Service is very concerned with the impact that these actions could have on the piping plover, a Federally listed endangered species, and the proposed Critical Habitat for the plover that exists in Sheldon's Marsh. At this time of year, piping plovers and many other species of migratory birds are using this area for foraging, breeding, nesting, or as a stop-over site during migration. Disturbing this area at this particular time will increase sedimentation, adversely modifying the plover's Critical Habitat. In addition, activities related to restoring the area at this time would likely include heavy machinery, producing loud noises that would discourage plovers and other migratory birds from using the area. We also recommend that these measures be postponed to protect fish spawning that normally occurs from April 15-June 15. Piping plovers normally remain in this area until October, consequently we request that any restoration activities be postponed until then. Any activities occurring before October could adversely modify Critical Habitat for the plover, which constitutes "take" under the Endangered Species Act.

In the past, the Service has requested that Barnes Nursery restore the entire area to pre-disturbance conditions. The reasoning behind this is explained in the Service's October 13, 2000 letter to the Corps. We continue to believe that total restoration of the area is the only way to prevent the degradation of this unique ecosystem. We understand that the area in question has been temporarily seeded to minimize erosion. We feel that since this is not an appropriate time to disturb the marsh, the temporarily established vegetation will provide some form of stabilization during this growing season. In the meantime, we feel it is appropriate and necessary for Barnes Nursery to prevent invasive species from colonizing the area.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973, as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy.

If you have questions, or if we may be of further assistance in this matter, please contact Megan Sullivan at extension 16 in this office.



Megan Sullivan

04/17/2001 01:40 PM

To: Michael.G.Montone@usace.army.mil  
cc: Kim.Baker@dnr.state.oh.us, Kenneth.Lammers@fws.gov,  
ric.queen@epa.state.oh.us, Stu.Lewis@dnr.state.oh.us  
Subject: Barnes Nursery

Mr. Montone,

The Service has been informed that Barnes Nursery has begun work within Sheldon's Marsh. Specifically we understand that they have begun to fill the western 200 feet of the excavated channel and will be constructing a new inlet into Sheldon's Marsh at the end of the filled portion of the channel.

We are very concerned with these actions. As we stated in our April 11, 2001 e-mail, this area has been designated as proposed Critical Habitat for the piping plover. Because Sheldon's Marsh has been designated as proposed Critical Habitat, actions which may result in adverse modification of the Sheldon's Marsh area require conferencing with U.S. Fish and Wildlife Service under the Endangered Species Act (ESA). We strongly advise informal conferencing at this time because formal conferencing may become necessary in the future. We anticipate that the final notice officially declaring Sheldon's Marsh as Critical Habitat will be published soon. Further information regarding this Critical Habitat proposal can be obtained on the Service's website at <http://plover.fws.gov/>.

After our April 11, 2001 email and several follow-up messages and phone calls between yourself and Ken Lammers, Acting Supervisor for this office, we were expecting to be consulted further on this issue. We believe that follow-up consultation is warranted in this case, and we feel that our April 11, 2001 comments were not appropriately considered when the decision was made to grant Barnes Nursery permission to commence construction on this project. As was discussed in our email, there are appropriate times of year when it would be acceptable to commence work in this sensitive area in order to restore it to its pre-disturbance condition; however, we do not believe that this is the correct time. As this is the time of year when piping plovers are likely to be in the area, and this is part of the breeding season for the plovers, we believe that it is inappropriate and unacceptable to begin construction now.

Furthermore, we understand that construction began yesterday, April 16, 2001, before the official letter of permission was received by Barnes Nursery, and before the letter had been sent by the Buffalo Corps. We do not understand how and why construction was allowed to commence at this time, before the appropriate letter had been issued. In addition, we have questions regarding the work that is apparently permitted. The interim corrective measures outlined in your April 4, 2001 email did not include any mention of excavation of a new inlet adjacent to the end of the area to be filled. It is our understanding that in order to excavate a new inlet, either a Nationwide or Individual Permit would be necessary, since waters of the U.S. are involved. Please provide us with some explanation of these events, and include a copy of the approved letter to Barnes Nursery describing the interim corrective measures requested by the Corps.

We fully expect to be consulted further on this project, and we would have appreciated notification in advance of any permit issued to disturb Sheldon's Marsh. We would like to reiterate that since this area is proposed Critical Habitat, we must remain fully involved in this regulatory process. Once a final Critical Habitat designation is obtained, the Corps will be obligated to obtain U.S. Fish and Wildlife Service concurrence before commencing projects within areas designated as Critical Habitat. Without our concurrence, any adverse modification of Critical Habitat will be construed as 'take' under the ESA, and can be prosecuted. We strongly encourage you to consult further with this office regarding this project. Future correspondence can be directed to Ms. Megan Sullivan, biologist, and Mr. Ken Lammers, Acting Supervisor in this office.



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE



Ecological Services  
6950 Americana Parkway, Suite H  
Reynoldsburg, Ohio 43068-4127  
(614) 469-6923/FAX (614) 469-6919  
June 11, 2001

Lt. Colonel Glen R. DeWillie  
Buffalo District, Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207

Attention: Regulatory Branch, Mr. Michael Montone

Dear Colonel DeWillie:

The U. S. Fish and Wildlife Service has completed reviewing Public Notice No. 2000-02170(1), dated May 11, 2001. The applicant, Mr. Robert W. Barnes, president of Barnes Nursery, Inc., proposes to dredge and discharge approximately 14,100 cubic yards of material affecting approximately two acres of mudflats, in association with a project constructed in waters of the United States. Mr. Barnes is requesting this authorization after-the-fact in order to maintain the project he constructed during July 2000, and also is proposing new modifications. The project is located within Sheldon Marsh, at 3511 Cleveland Road West, Huron, Erie County, Ohio.

The purpose of the proposed project is to restore the former hydrologic circulation to a portion of the East Sandusky Bay, and provide irrigation water for operation of Mr. Barnes' nursery; establish new avifauna habitat on a series of islands; provide deep water fish and aquatic vegetation habitat; and promote the conversion of approximately five acres of barren mudflats to coastal wetlands.

The original project created a channel approximately 1,500 feet long, 55 feet wide, and 5 feet deep using dredging techniques. The dredged material was used to create an earthen berm 1,500 feet long, 55 feet wide and approximately six feet high, that runs parallel with the channel. On April 18, 2001, 200 feet of the far western portion of the project was restored to former topography where wetland encroachment occurred. The applicant has requested authorization to maintain the constructed portion of this project with the following modifications: grade the berm to a relatively uniform elevation of six feet; divide the berm into five separate islands by cutting circulation channels every 300 feet; grade the banks of these islands to a 4:1 slope to foster wetland plant zonation; excavate a narrow feeder channel 500 feet long and 1.5 feet deep from the end of the existing channel to the area of water influx from Lake Erie.

This project is located within Sheldon Marsh, one of Lake Erie's last remaining intact coastal wetland systems. The majority of the Marsh is protected as a State Nature Preserve, but the outskirts of the area are private property. There is, however, no physical boundary between the State and private land. Although the current channel is located on private property, it is now resulting in, and will continue to result in direct impacts to State land. Sheldon Marsh is a large, contiguous, high quality, wetland system that has been designated a Category 3 wetland by the Ohio EPA. The construction of this project will very likely contribute to the degradation of this system. The Service would like to clarify the purpose of this project. We refute the notion that this project is a wetland restoration project, and assert that the main focus of the project is to provide water to Barnes Nursery. The project may have been designed with ecological benefits in mind; however, the actual purpose is to provide a water source. Prior to

addition, one of the only species of fish that would utilize silty waters is carp, an aggressive species that prevents future colonization by other fish species and disrupts the growth of aquatic vegetation that may provide forage for birds and wildlife.

At the site visit, we examined the recently restored area of wetland encroachment. The two species that were aggressively recolonizing the area were purple loosestrife and *Phragmites* sp., both invasive species. It is our belief that these species are likely to dominate the proposed islands as well. Without careful management of the area and continuous efforts to control invasive vegetation, these islands will easily become infested with these species, which out-compete native plant species and provide little benefit to native wildlife. If this area were to be regularly managed to control invasives, this could likely involve the use of herbicides and heavy machinery, which further alters the natural state of the marsh and disturbs the ecosystem. The proposed islands will provide artificial nesting and foraging habitat for opportunistic species such as Canada geese and gulls. The increased presence of these species will likely decrease the value of the marsh for endemic bird species. Grazing and nesting activities of Canada geese and gulls can easily reduce the available native marsh vegetation, which would result in altering and/or reducing foraging and breeding habitat for endemic species.

Furthermore, we question the value of the "deep water habitat" provided by the excavated channel. Channels such as this one did not exist within the marsh prior to construction, and their presence now may introduce non-marsh species into the marsh. The channel will provide a potential passageway for invasive species to move into areas that they do not currently occupy. This channel will require regular maintenance to keep it from filling with sediment. Regular maintenance will continually disturb the ecosystem, and will likely reduce the quality of the habitat for birds and other wildlife. The large size of the existing channel could potentially encourage trespassing boaters, especially during times of high water, disturbing the area.

Finally, the Service is very concerned that the presence of the islands and channel will alter the hydrology of the marsh. Where water would normally be distributed to other areas of the marsh, with the proposed project, it will be funneled into the channel at a rate of approximately 350,000 gallons per day (personal communication with Sharon Barnes). This is a significant amount of water that is being diverted from the rest of the marsh. Diversion of this water could ultimately affect the formation and maintenance of wetland areas within the marsh. The berm that is present now obviously affects the flow of water, as it almost completely segregates a large area of mudflats and wetlands from the rest of the marsh. This area has little water flow and will likely develop into a different type of habitat, if it remains this way.

After discussing this project with other agency officials and Service biologists, we believe that other alternatives exist that could provide Barnes Nursery with water and avoid all impacts to Sheldon Marsh. We believe that these alternatives have not been fully examined, and that this project could be designed such that Sheldon Marsh could remain the pristine ecosystem that it has been for decades.

Because of the value of this area to fish and wildlife resources, its value as one of Lake Erie's last remaining coastal wetland areas, its value to the endangered piping plover and the threatened bald eagle, and its relatively undisturbed nature, the Service recommends that the permit, as proposed, be denied.

**ENDANGERED SPECIES COMMENTS:** The proposed project lies within the range of the bald eagle and piping plover, Federally listed threatened and endangered species, respectively. Both species use this area for foraging. The project, as proposed, is likely to adversely modify this area, decreasing its potential value to these and other species.

The proposed project lies within the range of the Indiana bat, eastern massasauga, Lake Erie water snake, and lakeside daisy, Federally-listed endangered and threatened species. Due to the project type and

location, the project, as proposed, will have no effect on these species. Relative to these species, this precludes the need for further action on this project as required by the 1973 Endangered Species Act, as amended. Should the project be modified or new information become available that indicates listed or proposed species may be affected, consultation should be initiated.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973, as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy.

We appreciate this opportunity to provide the above comments. If you have questions, or if we may be of further assistance in this matter, please contact Megan Sullivan at extension 16 in this office.

Sincerely,



Kenneth C. Lammers  
Acting Supervisor

cc: DOW, Wildlife Environmental Section, Columbus, OH  
ODNR, Division of Real Estate & Land Management, Columbus, OH  
Ohio EPA, Water Quality Monitoring, Attn: Rick Queen, Columbus, OH  
US EPA, Office of Environmental Review, Chicago, IL





INFORMATION

## United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
6950 Americana Parkway, Suite H  
Reynoldsburg, Ohio 43068-4132

(614) 469-6923/FAX (614) 469-6919  
July 30, 2001

Lt. Colonel Glen R. DeWillie  
Buffalo District, Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207

Attention: Regu

Dear Colonel D:

The U. S. Fish and Wildlife Service has reviewed the proposal by Barnes Nursery, Inc. to complete interim remedial actions to reduce surface erosion on the side cast island and control sedimentation to East Sandusky Bay. The following actions were proposed:

1. Grade the sides of the island, particularly on the channel side, to a gentle slope. This will be accomplished by a combination of hand labor and small mechanical equipment.
2. Extensive portions of the island are currently vegetated with dense patches of smart weed (*Polygonum spp.*). These areas are well protected by this vegetation and therefore will not be disturbed.
3. Seed the currently non-vegetated portion of the island with a native ground cover such as panic grass or perennial rye grass.
4. Place berms of compost at top and bottom of island slopes to slow velocity of runoff water and provide sediment loading protection to the channel and adjacent East Sandusky Bay.

Barnes, Inc. esti

The Service agrees with the need to protect the waters of the Bay from sedimentation caused by erosion of the existing side-cast island. Care should be given to the choice of plant species used to stabilize the island. The Service recommends that the plants used be native to the area, provide a benefit to wildlife, and discourage use of the island by Canada geese and ring-billed gulls. Any plants used should not be known invasive or overly aggressive species. If compost berms are utilized to slow runoff water, they should be designed such that they are securely anchored in place, and pose no threat of increasing runoff or sloughing off into the water.

The Service would like the opportunity to review the complete interim erosion control proposal once it is submitted.

We appreciate this opportunity to provide the above comments. If you have questions, or if we may be of further assistance in this matter, please contact Megan Sullivan at extension 16 in this office.

Sincerely,

Kenneth C. Lammers  
Acting Supervisor

cc: DOW, Wildlife Environmental Section, Columbus, OH  
ODNR, Division of Real Estate & Land Management, Columbus, OH  
Ohio EPA, Water Quality Monitoring, Attn: Rick Queen, Columbus, OH  
US EPA, Office of Environmental Review, Chicago, IL





LEFT FOR YOUR  
INFORMATION

## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Ecological Services  
6950 Americans Parkway, Suite H  
Reynoldsburg, Ohio 43068-4132

(614) 469-6923/FAX (614) 469-6919  
September 28, 2001

Lt. Colonel Glen R. DeWillie  
Buffalo District, Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207

Attention: Regulatory Branch, Mr. Michael Montone

Dear Colonel DeWillie:

This letter serves as follow-up consultation on the bald eagle and piping plover, Federal threatened and endangered species, respectively, for the project proposed by Barnes Nursery, Inc. in East Sandusky Bay, Erie County, Ohio, Public Notice No. 2000-02170(1).

As proposed, the Barnes Nursery project will impact bald eagle foraging habitat and areas that could potentially provide foraging habitat for the piping plover, should the species recolonize this area. The project area is part of a heavily used staging area for fledgling eaglets throughout the region. The Service recommends the following modifications to the project design in order to minimize negative impacts on these two species.

#### Sedimentation and Water Quality

All efforts should be made to limit erosion and sedimentation in the project area. Sedimentation decreases the value of the habitat for fish and macro- and micro-invertebrates, and hence, birds that prey on these organisms, such as the bald eagle and piping plover. Establishment of vegetation on the created island was completed as part of the interim remedial actions proposed by Barnes Nursery in July 2001. Establishment of plants and their roots has and will continue to slow erosion and limit sedimentation. Furthermore, follow-up plantings of native prairie grass may be completed in the future which will continue to diminish erosion. This project proposal does not involve any dredging activity. Dredging this area would likely result in high amounts of suspended sediments entering the water, further disturbing the aquatic communities and disrupting feeding opportunities for eagles. The Service requests that water quality monitoring be performed regularly throughout the five-year monitoring period in both the created channel and the bay area to ensure that the project is not causing a decrease in water quality.

#### Invasive Species

Invasive species such as cattail (*Typha* spp.), common reed (*Phragmites australis*), and purple loosestrife (*Lythrum salicaria*) commonly thrive in disturbed wetlands including the proposed project site. These species, which provide little benefit to wildlife, often form a monoculture by outcompeting native vegetation. Indeed, in a plant survey conducted by Dr. Charles Herdendorf on September 7, 2001, each of these species was identified on the site. Interim corrective measures undertaken by the applicant included manually controlling these species to prevent their spread across the project area. The Service requests that the applicant control these species throughout the five-year monitoring period imposed by the Corps of Engineers. Furthermore, we request that herbicides be used sparingly, if at all, to protect native, beneficial plants in the project area. A diverse array of native plant species provides better habitat for

wildlife, which in turn provides better foraging habitat for eagles and plovers.

#### Human Disturbance

Bald eagles are notoriously shy and tend to avoid areas that are regularly disturbed by humans. A study on fledgling eagles in Ohio's western Lake Erie basin, completed by the Ohio Division of Wildlife from 1989-1992, shows that, "Once independent, young eagles search out low human activity areas with good food supplies and adequate perch sites prior to migrating. The young responded to human disturbance by fleeing the area of intrusion, often by extended soaring periods." This same study demonstrated that fledglings dispersed mainly to Sandusky Bay, Ottawa National Wildlife Refuge near the mouth of the Toussaint River, Winous Point, and Cedar Point National Wildlife Refuge in the western basin of Lake Erie. Young eagles were identified from Ohio, Michigan, Indiana, Wisconsin, and Canada, and gathered in communities at these locations. Fledglings were found to utilize the mouth of the Toussaint River only from Tuesday to Thursday, which corresponded with the days when human use was at a minimum. According to the study, "Habitat analysis indicates potential concern for meeting long-term fledgling habitat needs as Ohio's eagle population continues to grow (Mark Shieldcastle, Pers.com., 9/26/01)." We recommend that human disturbance of the project site be kept to a minimum. This includes discouraging use of the area by trespassing individuals on foot or in boats. The Service recommends posting "no trespassing" and "no fishing" signs in the project vicinity in order to minimize human disturbances. In addition, the Service requests that heavy machinery be prohibited within the project area. Introducing large, loud machines, even temporarily, is often enough to discourage eagles and other sensitive species from regularly using the area.

#### Nuisance Species

The design of this project may influence the use of existing habitat by certain nuisance species, such as carp, Canada geese, and gulls, which may, in turn, affect the value of the habitat for eagles and plovers. Carp, a notoriously aggressive fish species that lives in silty water, usually contributes to sedimentation by thrashing about in the water and uprooting aquatic vegetation. This sedimentation prevents future colonization by other fish species and aquatic invertebrates, and disrupts the growth of aquatic vegetation that may provide forage for birds and wildlife. During a site visit on May 22, 2001, Service biologists observed a large number of carp spawning in the waters adjacent to the project. The Service proposes that the applicant undertake a fish monitoring study to determine what species are present now and their relative abundance. This study should continue throughout the five-year monitoring period to determine what, if any, effect the project is having on the fish community.

Gulls and Canada geese are two other nuisance species whose presence tends to decrease the value of the habitat for other species, specifically the piping plover. These species could potentially be attracted to the created island for nesting and foraging. The increased presence of these species will likely decrease the value of the marsh for endemic bird species. Gulls are known to prey on the eggs of piping plovers. Grazing and nesting activities of Canada geese and gulls can easily reduce the available native marsh vegetation, which would result in altering and/or reducing foraging and breeding habitat for endemic species. Planting the area with native prairie grass, and allowing the vegetation to become tall and dense will help to discourage gulls and geese. Assuring that the island is not mowed or vegetation otherwise disturbed should keep most of these nuisance birds away.

#### Further Actions

The Corps has stated that the island could be put into a conservation easement and held by a third party that would manage the area for fish and wildlife habitat. The Service agrees that this would be an acceptable means of maintaining the property, provided that the third party adheres to the guidelines provided above.

Please note that the Service continues to oppose the project, as proposed. We assert that the project will negatively affect the surrounding environment, as well as Sheldon Marsh State Nature Preserve. We believe that other alternatives exist that could provide Barnes Nursery with water and avoid all impacts to this area. We believe that these alternatives have not been fully examined, and that this project could be designed such that the bay could remain the pristine ecosystem that it has been for decades. We would like to see the area restored to its original condition and request that Barnes Nursery, Inc. develop less environmentally damaging means to obtain water.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973, as amended, and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy.

We appreciate this opportunity to provide the above comments. If you have questions, or if we may be of further assistance in this matter, please contact Megan Sullivan at extension 16 in this office.

Sincerely,



Kenneth C. Lammers  
Acting Supervisor

cc: ODNR, Division of Wildlife, Columbus, OH  
ODNR, Division of Natural Areas and Preserves, Columbus, OH  
ODNR, Division of Real Estate & Land Management, Columbus, OH  
Ohio EPA, Water Quality Monitoring, Attn: Rick Queen, Columbus, OH  
US EPA, Office of Environmental Review, Chicago, IL